

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE P.R.RAMAN

TUESDAY, THE 21ST NOVEMBER 2006 / 30TH KARTHIKA 1928

WA.No. 1846 of 2006()

AGAINST THE JUDGEMENT IN OP.31495/2002 DATED 12/07/2006

APPELLANT: PETITIONER IN THE OP

C.R.BABU PRAKASH, S/O.RAGHAVAKURUP,
CHAMAVILAYIL HOUSE, ERUMAKKUZHY P.O.,
NOORANAD, MAVELIKKARA.

BY ADV. SRI.T.I.DANIEL

RESPONDENTS: RESPONDENTS IN THE OP

1. THE STATE OF KERALA, REPRESENTED
BY THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
TRIVANDRUM.
2. THE DIRECTOR GENERAL OF POLICE,
GOVERNMENT OF KERALA, TRIVANDRUM.
3. THE SUPERINTENDENT OF POLICE,
RURAL, ALUVA.
4. THE CIRCLE INSPECTOR OF POLICE,
ANGAMALY POLICE STATION, ANGAMALY.
5. THE SUB INSPECTOR OF POLICE,
ANGAMALY POLICE STATION, ANGAMALY.
6. THE DIVISIONAL MANAGER,
NATIONAL INSURANCE COMPANY LTD.,
NELSOM COMPLEX, IST FLOOR, NEAR STATE BANK OF
INDIA, POST BOX NO.60, KAYAMKULAM-690 502.

BY ADV. SRI.P.R.RAMACHANDRA MENON

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 9/11/2006, THE COURT ON 21.11.2006, DELIVERED THE
FOLLOWING:

V.K. BALI, C.J. & P.R. RAMAN, J.
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W.A. NO. 1846/2006
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DATED THIS, THE 21ST DAY OF NOVEMBER, 2006.

J U D G M E N T

Raman, J.

Appellant is the petitioner in O.P. 31495/2002, who is the registered owner of a Mahindra Diesel Jeep bearing Reg. No. KL-4/E 9748, which was a new vehicle purchased from T.V.S. Ernakulam. According to the appellant, the vehicle was purchased for his personal use and he never intended to hire or reward the same to any person. The 5th respondent, Sub Inspector of Police, Angamaly Police Station is alleged to have forceably taken possession of the vehicle from the appellant on 9.2.1999 for being used for conducting patrol duty in connection with the harthal declared by the political parties. While the vehicle was thus being used by the 5th respondent for patrol duty, it met with an accident on 9.2.1999, as a

result of which three police personnels in the jeep were seriously injured besides three of them died. At the relevant time, the jeep was driven by a police constable who had valid driving license and the vehicle was having a valid insurance policy. Since the vehicle was seriously damaged, appellant submitted an estimate for getting repairing charges of the same before the Insurance Company which was turned down on the ground that the vehicle was used by the appellant for a purpose other than to which it was insured. According to the appellant, though the vehicle was intended to be used for personal use, the circumstances under which the same was used by the police personnel was beyond his control and at any rate, if the Insurance Company is not liable to pay the repairing charges, the same has necessarily to be paid by the State. It was on these grounds, the writ petition was filed.

2. The learned Single Judge hold that if the petitioner approaches the State who is the first

respondent in the writ petition, the matter will be duly considered with notice to him and the 6th respondent and take appropriate action in accordance with law, within four months. His right to approach the civil court was also left open.

3. The appellant contends that the facts that the jeep was used by the police officials for patrol duty on the date of the accident and it as driven by a police constable are beyond dispute. According to him, since damages were sustained to the vehicle when it was used by the police officials to meet the the exigencies of patrol duty on a Harthal day, they are bound to restore the vehicle to its original condition or pay the expenditure for repairing the same. The learned Single Judge, in the circumstances, erred in not granting the relief, it is contended.

4. We have heard the learned counsel for the appellant, counsel for the Insurance Company, as also the Government Pleader appearing on behalf of the State. Though the learned Government Pleader

appearing on behalf of the State submitted that the vehicle was not taken by force from the appellant, there is no reason to disbelieve the appellant in this regard. Admittedly, it was a private jeep intended for personal use. If as a matter of fact, the vehicle was hired out contrary to the purpose of use of the vehicle as per the registration, necessarily, the vehicle would have been driven by a driver of the appellant. In this case, there is no serious dispute that the vehicle was driven at the relevant time by a police constable and further at the time of accident the vehicle was being used for patrol duty and some of the police officials were injured and some of them died. The facts being thus stated, there cannot be any doubt that the first respondent has a primary duty to pay the expense incurred or to be incurred by the appellant for repairing the vehicle. Since the petitioner has to be paid repair charges by the first respondent, all the rights if any, under the Insurance Policy to claim damages for the vehicle

on behalf of the appellant will stand transferred to the State and the appellant shall authorize the State to receive the compensation based on the policy, if otherwise entitled to in law. The first respondent, if so advised, can proceed against the Insurance Company and settle their claim. We make it clear that we have not adjudicated the right and the obligation, if any, inter se between the appellant and the Insurance Company in the matter of payment of compensation in terms of the policy, which has to be decided in appropriate forum, if and when the same is raised.

5. In the result, we direct the first respondent to settle the claim of the appellant and pay the repairing charges of the jeep for which the appellant may approach the first respondent and produce necessary documents for the amount claimed by him. This shall be done within a period of three weeks from today. The first respondent shall, after perusing the details so furnished, pay the amount as found genuine for undertaking the

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repairs or in the alternative the Government may get the jeep repaired at their expense in any of its approved workshop.

The writ appeal is disposed of as above.

V.K. BALI,
(CHIEF JUSTICE)

P.R. RAMAN,
(JUDGE)

knc/-